

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

FEDERAL ELECTION COMMISSION,)	
)	
Plaintiff,)	Civ. No. 21-346-BAJ-SDJ
)	
v.)	
)	MEMORANDUM IN
DEFEND LOUISIANA PAC, <i>et al.</i> ,)	SUPPORT OF MOTION FOR
)	DEFAULT JUDGMENT
Defendants.)	

**MEMORANDUM IN SUPPORT OF THE FEDERAL ELECTION COMMISSION’S
MOTION FOR DEFAULT JUDGMENT**

Default judgment against Defend Louisiana PAC and Taylor Townsend, in his official capacity as treasurer, is warranted. The Federal Election Commission (“FEC” or “Commission”) commenced this action on June 14, 2021. (Compl., ECF No. 1.) The Commission’s complaint alleged that Defend Louisiana and Townsend violated the Federal Election Campaign Finance Act (“FECA”) by failing to report certain independent expenditures and by failing to describe adequately the purpose of eight expenditures in Defend Louisiana’s campaign finance disclosure filings. *See* 52 U.S.C. §§ 30104(a)(1), (b)(6)(B)(iii). The Commission served the complaint and summons on both defendants on July 13, 2021. (Aff. of Process Server, ECF No. 6; Aff. of Process Server, ECF No. 7.) Yet neither defendant has entered an appearance nor filed a responsive pleading. The clerk entered a default against both defendants on August 13, 2021. (Clerk’s Entry of Default, ECF No. 9.) Because defendants have been unresponsive, they have halted the adversary process; therefore, default judgment is appropriate.

BACKGROUND

FECA requires that groups registered as political committees file periodic disclosure reports identifying, *inter alia*, each “person who receives any disbursement” aggregating more than \$200, as well as “the date, amount, and purpose of” the independent expenditure. 52 U.S.C. § 30104(b)(6)(B)(iii). Defend Louisiana, a registered political committee, made \$551,525.44 in independent expenditures supporting Foster Lonnie Campbell or opposing John Neely Kennedy in the 2016 Louisiana U.S. Senate runoff election. (Compl. ¶ 23.) Those independent expenditures triggered the requirement that Defend Louisiana file both a pre-runoff and post-runoff election report. (*Id.*) On November 28, 2016, Defend Louisiana filed its pre-runoff report, which Townsend signed. (*Id.*) On Schedule E of the pre-runoff report, Defend Louisiana disclosed sixteen independent expenditures totaling \$209,049.79. (*Id.*) Eight of those independent expenditures had a stated purpose of “Community Outreach,” as shown in Table One below. (*Id.* ¶ 24.)

Table One: Independent Expenditures with Inadequate Purpose Statements

Payee	Date	Purpose Statement	Federal Candidate Supported	Amount
APAC	10/27/2016	Community Outreach	Foster Lonnie Campbell	\$5,500
LIFE	10/27/2016	Community Outreach	Foster Lonnie Campbell	\$7,500
NOEL	10/27/2016	Community Outreach	Foster Lonnie Campbell	\$2,500
United Ballot PAC	10/27/2016	Community Outreach	Foster Lonnie Campbell	\$5,000
BOLD	10/31/2016	Community Outreach	Foster Lonnie Campbell	\$6,000
Jefferson United	10/31/2016	Community Outreach	Foster Lonnie Campbell	\$10,000
Noel	10/31/2016	Community Outreach	Foster Lonnie Campbell	\$5,000
TIPS	10/31/2016	Community Outreach	Foster Lonnie Campbell	\$4,000
			Total	\$45,500

On December 12, 2016, Defend Louisiana filed a 48-Hour report disclosing three independent expenditures disseminated on December 10, 2016, totaling \$45,475.65. (*Id.* ¶ 28.)

On January 9, 2017, Defend Louisiana filed a post-runoff report covering the period of

November 21, 2016, through December 30, 2016. (*Id.* ¶ 29.) However, the Schedule E did not disclose the three independent expenditures, as shown in Table Two below, that Defend Louisiana previously included in the December 12, 2016 48-Hour report. (*Id.*)

Table Two: 48-Hour Report Activity Not Disclosed on Schedule E

Payee	Date	Purpose Statement	Federal Candidate Supported/Opposed	Amount
EF Business Center	12/10/2016	Mailers	John Neely Kennedy	\$28,875.65
Last World Strategies	12/10/2016	Digital Ad Consulting	Foster Lonnie Campbell	\$8,300
Last World Strategies	12/10/2016	Digital Ad Consulting	John Neely Kennedy	\$8,300
			Total	\$45,475.65

On January 31, 2017, Defend Louisiana filed amended pre-runoff and post-runoff reports, but the amended reports did not contain any changes to the Schedule Es. (*Id.* ¶¶ 26, 30.)

The Commission’s Reports and Analysis Division reached out to Defend Louisiana with Requests for Additional Information regarding both the “Community Outreach” purpose statements on the pre-runoff report and the missing independent expenditures on the post-runoff report. (*Id.* ¶¶ 31, 33.) Neither Defend Louisiana nor Townsend responded to the requests. (*Id.* ¶ 32.) The Reports Analysis Division made multiple additional attempts to contact Defend Louisiana and Townsend via phone and email to resolve the defects with the pre-runoff report and post-runoff report, but defendants failed to correct the reports. (*Id.* ¶ 35.)

Defend Louisiana and Townsend also failed to respond to the following:

- (1) A June 28, 2018 letter notifying defendants that Defend Louisiana and Townsend may have violated FECA and that the matter was referred to the FEC’s Office of General Counsel for possible enforcement action, *id.* ¶¶ 36-37;
- (2) A May 23, 2019 letter informing defendants that the Commission decided by a vote of 4-0 to find reason to believe that Defend Louisiana and Townsend violated 52 U.S.C. §§ 30104(a)(1) and 30104(b)(6)(B)(iii), (Compl. ¶¶ 38-39);

- (3) A July 23, 2020 letter that informed defendants that the Commission decided by a vote of 4-0 to find probable cause to believe that Defend Louisiana and Townsend violated 52 U.S.C. §§ 30104(a)(1) and 30104(b)(6)(B)(iii) and contained a proposed conciliation agreement, (Compl. ¶¶ 42-43).

The Commission attempted to conciliate for 90 days, but defendants never responded. (Compl. ¶¶ 43-44.) On March 8, 2021, the Commission decided by a vote of 6-0 to authorize a civil action against defendants for failing to provide adequate purpose statements for eight independent expenditures in Defend Louisiana’s pre-runoff report and for failing to disclose three independent expenditures in its post-runoff report. (*Id.* ¶ 45.) On June 14, 2021, the Commission filed a complaint against Defend Louisiana and Townsend for violating 52 U.S.C. §§ 30104(a)(1) and 30104(b)(6)(B)(iii). (Compl., ECF No. 1.) The Court issued summonses, and Defend Louisiana and Townsend were properly served with the summonses and complaint on July 13, 2021. (ECF Nos. 6, 7.) Neither Defend Louisiana nor Townsend filed responsive pleadings within 21 days of service, and so the Clerk of Court entered Default as to both defendants on August 13, 2021. (ECF No. 9.)

ARGUMENT

Default judgment against Defend Louisiana and Townsend is appropriate because their unresponsiveness to the Commission’s complaint means that “the adversary process has been halted.” *United States v. Charter Home Health, LLC*, No. 19-CV-881-BAJ-RLB, 2020 WL 7311347, at *2 (M.D. La. Dec. 11, 2020) (quoting *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989)). The Court applies “a two-part process to determine whether a default judgment should be entered.” *Charter Home Health, LLC*, 2020

WL 7311347, at *2. First, the Court considers the six *Lindsey* factors to determine whether “default judgment is procedurally justified”:

(1) whether there are material issues of fact; (2) whether there has been substantial prejudice; (3) whether the grounds for default have been clearly established; (4) whether the default was caused by excusable neglect or good faith mistake; (5) the harshness of the default judgment; and (6) whether the Court would think itself obliged to set aside the default on a motion by Defendant.

Id. (citing *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998)). Second, the Court “determine[s] whether the plaintiff’s complaint sufficiently sets forth facts establishing that it is entitled to relief.” *Id.* (citing *Nishimatsu Constr. Co. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)).

Upon completing the two-step process, “the Court must determine what form of relief the [p]laintiff should receive.” *Id.* at *3. The Court generally does not award damages “without a hearing or a demonstration by detailed affidavits establishing the necessary facts.” *Id.* (internal quotation marks omitted). “However, no hearing is required when ‘the amount claimed is a liquidated sum or one capable of mathematical calculation.’” *Id.* (quoting *James v. Frame*, 6 F.3d 307, 310 (5th Cir. 1993)).

I. Entry of Default Judgment is Procedurally Justified.

First, there are no issues of material fact. By failing to respond to the Commission’s complaint, the defendants have “admit[ted] the plaintiff’s well-pleaded allegations of fact.” *Nishimatsu Constr. Co. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). The facts alleged in the Commission’s complaint establish that Defend Louisiana is a political committee that registered with the FEC in April 2016. FECA requires Defend Louisiana, as a political committee, to file disclosure reports either: (1) monthly; or (2) quarterly during election years with an additional “pre-election report” due 12 days before an election and a “post-election report” due 30 days after the election. 52 U.S.C. § 30104. These reports must include any

independent expenditure that the committee makes, 52 U.S.C. § 30104(b)(6)(B)(iii), as well as purpose statements describing why each expenditure was made, 11 C.F.R. § 104.3(b)(3)(i)(A). These descriptions must “provide sufficient public disclosure of how a committee used its funds.” *Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress*, 45 Fed. Reg. 15,080, 15,086 (Mar. 7, 1980); *see also Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission*, 72 Fed. Reg. 887 (Jan. 9, 2007) (explaining that the “entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear”). “[S]tatements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration,” do not provide sufficient public disclosure of how a committee used funds. 11 C.F.R. § 104.3(b)(3)(i)(B). “Constituent outreach” and “outreach” are also examples of purpose statements that the FEC has specifically identified as inadequate. FEC, *Purposes of Disbursement*, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last visited Aug. 31, 2021).

As alleged in the complaint, Defend Louisiana’s description of the purpose of eight independent expenditures in its pre-runoff report as “Community Outreach” is akin to “get-out-the-vote” or “constituent outreach” and are thus legally inadequate. (Compl. ¶ 25.) The Commission further alleged that Defend Louisiana failed to report three independent expenditures entirely in its post-election report, and that Townsend was the treasurer responsible for Defend Louisiana’s filings. (*Id.* at ¶ 27, 29.) These facts are undisputed as Defend Louisiana and Townsend have failed to file an answer in response to the FEC’s complaint.

Second, the FEC and the public have endured substantial prejudice as a result of Defend Louisiana's and Townsend's FECA violations. The public has an interest in knowing how a committee uses its funds, including "who is speaking about a candidate and who is funding that speech." *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc); *see also Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress*, 45 Fed. Reg. at 15,086; *see also Statement of Policy: "Purpose of Disbursement" Entries for Filings with the Commission*, 72 Fed. Reg. at 887 (explaining that the "entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear"). Defend Louisiana and Townsend harmed the public interest when they: (1) provided inadequate purpose statements for eight independent expenditures on the pre-election report, depriving the public of the knowledge of how the committee was using its funds; and (2) failed to report three independent expenditures on the post-election report, depriving the public of one of the ways that it should have been able to determine who was speaking about the candidate and who was funding that speech. (Compl. ¶¶ 24-25, 29.) By failing to enter an appearance or file responsive pleadings, defendants have halted the adversary process and are preventing the FEC from litigating to vindicate the public's interest in transparent campaign finance. Therefore, default judgment is necessary to remedy the substantial prejudice that the public has suffered.

Third, the FEC has established grounds for default judgment. Defend Louisiana and Townsend were properly served summonses and the FEC's complaint. (ECF Nos. 6, 7.) Because they failed to enter an appearance or file any responsive pleadings within 21 days after being served the summonses and complaint, the Clerk of the Court entered default. (ECF No.

13.) More than 14 days have passed since the Clerk's entry of default, therefore the grounds for default judgment have been met. M.D.La. R. 55.

Fourth, there is no reason to believe that Defend Louisiana's and Townsend's defaults are the result of excusable neglect or good-faith mistake. Townsend was personally served the summonses and complaint for both defendants, yet neither Defend Louisiana nor Townsend filed responsive pleadings. (ECF Nos. 6, 7.) Townsend is an attorney and should understand Federal Rule of Civil Procedure 12's responsive pleading requirements. Furthermore, Townsend has a history of failing to respond to the FEC's attempts to contact him to resolve Defend Louisiana's reporting violations. (Compl. ¶¶ 31-44.)

Fifth, entry of default judgment against Defend Louisiana and Townsend is not overly harsh. Defendants have had multiple opportunities to resolve this case. Prior to any administrative enforcement proceedings, the FEC informed defendants of their reporting violations and gave defendants the opportunity to amend Defend Louisiana's reports to cure the deficiencies. (*Id.*) Defendants failed to amend the reports and stopped responding to the FEC's attempts to contact them regarding the violations. (*Id.*) The Commission attempted to engage defendants in a statutorily mandated conciliation period, but defendants made no response to those efforts. (*Id.* ¶¶ 42-44.) Defend Louisiana and Townsend then failed to enter an appearance or file any pleadings responsive to the FEC's civil complaint. (ECF No. 9.) This persistent failure to respond or appear "mitigates the harshness of a default judgment." *Charter Home Health, LLC*, 2020 WL 7311347, at *3.

Sixth, the FEC is not aware of any facts that would lead the Court to set aside the default judgment if challenged by Defend Louisiana and Townsend. Therefore, because all six *Lindsey*

factors weigh in favor of the FEC, the Court should find that default judgment is procedurally justified.

II. The FEC's Complaint Establishes a Viable Claim for Relief.

“A default judgment ‘must be supported by well-pleaded allegations and must have a sufficient basis in the pleadings.’” *Charter Home Health, LLC*, 2020 WL 7311347, at *3 (quoting *Wooten v. McDonald Transit Assocs., Inc.*, 788 F.3d 490, 498 (5th Cir. 2015)). In order to obtain a default judgment, the pleadings must contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” and must “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Id.* (citations and internal quotation marks omitted).

The FEC filed a civil enforcement suit against Defend Louisiana and Townsend for violating FECA. (Compl., ECF No. 1.) FECA requires that political committees report independent expenditures and provide adequate descriptions of the purpose of those expenditures. 52 U.S.C. § 30104(b)(6)(B)(iii); 11 C.F.R. § 104.3(b)(3)(i)(A). The FEC argued in its complaint that: (1) Defend Louisiana is a political committee, (Compl. ¶ 6); (2) Defend Louisiana and Townsend violated FECA when they failed to provide adequate purpose statements for eight independent expenditures in Defend Louisiana’s pre-runoff report, (*id.* ¶ 48); and (3) Defend Louisiana and Townsend violated FECA when they failed to report three independent expenditures in Defend Louisiana’s post-runoff report (*id.* ¶ 50). Defend Louisiana and Townsend did not file any pleadings responsive to these allegations. (ECF No. 9.) Therefore, these facts are undisputed and the FEC’s complaint establishes a valid claim for relief. *See Charter Home Health, LLC*, 2020 WL 7311347, at *3.

III. A Hearing to Assess Appropriate Relief is Unnecessary.

FECA authorizes a United States district court to order a defendant who has violated FECA to pay a civil penalty and provides a statutory basis for calculating the amount of such a penalty. 52 U.S.C. § 30109(a)(6)(B). FECA also authorizes the Court to grant permanent injunctions or issue other orders “upon a proper showing that the person involved has committed . . . a violation.” *Id.*; see also *Stockman v. FEC*, 138 F.3d 144, 153 n.16 (5th Cir. 1998) (“If the district court ultimately concludes that the respondent violated or is about to violate the Act, it may grant a permanent injunction or a fine of \$5,000.”); *SEC v. Kahlon*, 873 F.3d 500, 508 (5th Cir. 2017) (holding that a permanent injunction barring defendants from violating Section 5 of the Securities Act was appropriate); *SEC v. Gann*, 565 F.3d 932, 940 (5th Cir. 2009) (affirming district court’s grant of permanent injunction barring defendant from violating specific provisions of the Securities Act).

A hearing to assess damages is not necessary because the FEC’s requested civil penalty is a liquidated amount capable of mathematical calculation. See *Charter Home Health, LLC*, at *3 (citing *Frame*, 6 F.3d at 310). For each violation of 52 U.S.C. § 30104(b)(6)(B)(iii) and 52 U.S.C. § 30104(a)(1) that are not knowing and willful, “the civil penalty shall not exceed the greater of \$20,528 or an amount equal to any contribution or expenditure involved in the violation.” 11 C.F.R. § 111.24 (a)(1). The FEC is requesting that the Court assess the statutory amount of \$20,528 as the civil penalty for each of the two series of violations, for a total amount of \$41,056 against defendants Defend Louisiana and Townsend, in his official capacity as treasurer.

Furthermore, the Court need not hold a hearing to determine whether equitable relief is appropriate. The defendants have declined to appear and dispute the FEC’s claims that Defend Louisiana’s pre-runoff and post-runoff reports are deficient. Moreover, Defend Louisiana and

Townsend have refused to take any step to correct these violations despite the FEC's repeated attempts to contact defendants to resolve these issues informally and through conciliation. Thus, the FEC's only recourse to obtain corrected filings and protect the public interest in campaign finance transparency is a Court order directing Defend Louisiana and Townsend to file corrected reports.

Additionally, a permanent injunction barring Defend Louisiana and Townsend from future violations of 52 U.S.C. §§ 30104(a)(1) and 30104(b)(6)(B)(iii) is appropriate. The Court has authority to grant a permanent injunction when a violation of FECA has occurred. *Stockman*, 138 F.3d at 153 n.16. Again, defendants' violations of 52 U.S.C. §§ 30104(a)(1) and 30104(b)(6)(B)(iii) deprived the public of some of the required accountings of Defend Louisiana's independent expenditures in a contested federal election. Given defendants' history of FECA violations and their refusal to correct deficient filings, a permanent injunction barring future FECA violations is appropriate equitable relief.

CONCLUSION

For these reasons, the FEC requests that the Court enter default judgment against Defend Louisiana PAC and Taylor Townsend for violating 52 U.S.C. § 30104(b)(6)(B)(iii) and 52 U.S.C. § 30104(a)(1). The Commission further requests that the Court: order Defend Louisiana and Townsend to correct the pre-runoff and post-runoff reports; permanently enjoin defendants from failing to disclose independent expenditures and from providing inadequate purpose statements for independent expenditures; and assess a civil penalty of \$41,056.00 against defendants.

Respectfully submitted,

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